

No. 12-1080 EC

¹ References to “RSMo.” are to the Revised Statutes of Missouri, Supplement 2009, unless otherwise noted. The four statutory provisions cited in this decision appear as they existed prior to passage of SB 844 in 2010. On February 14, 2012, the Missouri Supreme Court declared the provisions of SB 844 relating to campaign finance unconstitutional on procedural grounds. *Legends Bank v. State*, 361 S.W.3d 383 (Mo. banc 2012).

We held a hearing on this matter on October 3, 2012. Curtis R. Stokes represented the MEC. Leone represented himself. The matter became ready for our decision on December 18, 2012, when the last written argument was filed.

Findings of Fact

1. MPCA PAC is registered with the MEC as a continuing committee and was at all relevant times.

2. Leone is registered with the MEC as the treasurer of MPCA PAC and was at all relevant times.

3. On December 15, 2011, MPCA PAC received a donation of \$6,000 from MFA Oil.

4. Leone did not electronically report the \$6,000 contribution to the MEC on or before 5:00 pm on December 17, 2011.

5. The MEC has a form entitled “Contribution of More than \$5,000.000 Received by Any Committee From Any Single Donor – to be Filed Within 48 Hours of Receiving the Contribution” (“the 48-hour form”). The 48-hour form contains the following language:

PURPOSE: The purpose of this form is to report within 48 hours the receipt of a single contribution of more than \$5,000.00 received from any single contributor. This information should also be included in the next full disclosure report filed by your committee.^{2]}

6. The first time Leone reported the \$6,000 donation to the MEC was in MPCA PAC’s quarterly report for the period September 1, 2011 through December 31, 2011, which was electronically filed on January 5, 2012. He did not report the donation on the 48-hour form.

7. The MEC notified Leone by e-mail on January 18, 2012 that review of the quarterly report filed on January 5, 2012 revealed that he had failed to file the 48-hour form for the \$6,000 contribution and that it was subject to late fees.

² Ex. 1-F.

8. Leone did not receive the MEC's January 18, 2012 e-mail.

9. The MEC notified Leone again by e-mail on May 15, 2012 that the 48-hour form was late and that it was subject to late fees.

10. On May 15, 2012, 150 days after December 17, 2011, Leone electronically filed the 48-hour form on an MEC form, the

11. On June 6, 2012, the MEC sent Leone by U.S. certified mail, a letter stating that the 48-hour form had been filed 150 days late and he was subject to a late fee of \$10 per day under the provisions of §105.963 RSMo. A fee statement included with the letter indicated that the amount due was \$3,000.

12. Upon receipt of the letter on June 6, 2012, Leone contacted the MEC. Leone and the MEC agreed the amount of the late fee should be \$1,500, and a new fee statement was sent to Leone.

Conclusions of Law

We have jurisdiction over this matter.³ Our duty is to decide the issues that were before the MEC.⁴ We must follow the same law that the MEC must follow.⁵ The MEC has the burden of proof.⁶

Section 130.011(14) defines "Disclosure Report" as:

an itemized report of receipts, expenditures and incurred indebtedness which is prepared on forms approved by the Missouri ethics commission and filed at the times and places prescribed[.]

Section 130.041.1⁷ provides:

Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to

³ Section 105.961.3 RSMo.

⁴ *Geriatric Nursing Facility v. Department of Social Services*, 693 S.W.2d 206, 209 (Mo.App. W.D. 1985).

⁵ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁶ *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo.App., St.L.D. 1974).

⁷ RSMo 2000.

file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures.

Section 130.044.1 provides:

All individuals and committees required to file disclosure reports under section 130.041 shall electronically report any contribution by any single contributor which exceeds five thousand dollars to the Missouri ethics commission within forty-eight hours of receiving the contribution. Such reports shall contain the same content required under section 130.041 and shall be filed in accordance with the standards established by the commission for electronic filing and other rules the commission may deem necessary to promulgate for the effective administration of this section.

Section 130.058⁸ provides:

The candidate or the committee treasurer of any committee except a candidate committee is ultimately responsible for all reporting requirements pursuant to this chapter.

Section 105.963.1 provides:

The executive director shall assess every committee, as defined in section 130.011, failing to file with a filing officer other than a local election authority as provided by section 130.026 a campaign disclosure report as required by chapter 130, other than the report required pursuant to subdivision (1) of subsection 1 of section 130.046, a late filing fee of ten dollars for each day after such report is due to the commission. The executive director shall mail a notice, by registered mail, to any candidate and the treasurer of any committee who fails to file such report informing such person of such failure and the fees provided by this section. If the candidate or treasurer of any committee persists in such failure for a period in excess of thirty days beyond receipt of such notice, the amount of the late filing fee shall increase to one hundred dollars for each day that the report is not filed, provided that the total amount of such fees assessed pursuant to this subsection per report shall not exceed three thousand dollars.

There is no dispute that Leone was required to electronically report receipt of the \$6,000 contribution to the MEC within 48 hours and that he did not do so.

Leone argues that the 48 hour “report” required by § 130.044.1 is a “notification of contribution” and not a “campaign finance disclosure report or statement of limited activity”, and is therefore not subject to late fees under §105.963.1. He argues further that since the 48-hour

⁸ RSMo 2000.

report is simply a notification of contribution, the same purpose was served by electronically reporting the \$6,000 contribution in the January 2012 quarterly report. Additionally, Leone argues that §105.963.1 required the MEC to provide notice within seven business days of failure to file the “48” hour report before they could begin to assess late fees.

The 48-hour report is clearly included in the definition of campaign finance disclosure report as “an itemized report of receipts ... which is prepared on forms approved by the Missouri ethics commission...” and is therefore subject to assessment of late fees under §105.963.1.

Thus, the issues to be decided here are whether electronically reporting the contribution in the quarterly report satisfied the requirement of §130.044 to electronically report receipt of the contribution to the MEC, albeit late, and obviated the need to file the actual 48-hour form; and whether the notice of the failure to timely report the \$6,000 contribution that the MEC provided to Leone was sufficient to trigger assessment of late fees.

Notice

Leone argues that §105.963.1 required the MEC to provide notice of his failure to file the required report “within seven business days.” Leone bases his argument on the amendment to §105.963.1 passed by the General Assembly in 2010 as part of SB 844.⁹ SB 844 was found unconstitutional in February 2012, rendering the repeal, reenactment, and amendment of this section ineffective.¹⁰ There is no “seven day” notice requirement in §105.963.1.

The MEC argues that under §105.963.1, a daily late fee accrues regardless of notice and the only effect of the registered notice required by that subsection is to increase the amount of that daily late fee to \$100 per day up to a maximum of \$3,000. The first sentence of § 105.963.1

⁹ At the end of the hearing, the Commissioner asked the parties to submit argument with regard to the impact of SB 844 on the issues of this case. Leone ignored this request and in his post-hearing brief continued to rely on the SB 844 amendment to § 105.963.1.

¹⁰ *Trout v. State*, 231 S.W.3d 140, 148 (Mo. banc 2007) and §3.066 RSMo Supp. 2012.

mandates that the MEC “ *shall* assess every committee ... failing to file ... a campaign finance report as required by chapter 130 ... a late filing fee of ten dollars for each day” The second sentence of § 105.963.1 mandates that the MEC “*shall* mail a notice by registered mail, to any candidate and the treasurer of any committee who fails to file such report informing such person of such failure and the fees provided by this section[.]” But the statute does not say when that notice must be sent or what effect, if any, failure to send the notice has on the assessment of late fees. The first and second sentences impose individual, seemingly unconnected, requirements on the MEC. The third sentence of §105.963.1 provides for an enhanced late fee for failure to file the delinquent report for more than thirty days after the notice required by the second sentence is received. While triggering the enhanced late fees may not have been intended to be the only purpose for the notice, we agree with the MEC that it is the only effect of the notice required by the second sentence of the statute.¹¹

Leone is subject to the MEC’s assessment of late fees pursuant to the first sentence of §105.963.1.

The “48 Hour” Report Form

Section 130.044.1 requires committees to “electronically report any contribution by any single contributor which exceeds five thousand dollars to the Missouri ethics commission within forty-eight hours of receiving the contribution.” The report must “contain the same content required under §130.041....”¹² Section 130.44 specifies the timing of reporting a contribution exceeding \$5,000 (within 48 hours), the manner of reporting the contribution (electronically), and the information to be reported (the same content required under §130.041).

¹¹ At any rate, in this case, the MEC did not even send the registered notice until after the delinquent report had been filed.

¹² Section 130.044.1.

It is undisputed that Leone did not report the \$6,000 contribution from MFA within 48 hours of receiving the contribution. The requirement that it be done within 48 hours could never be met. But Leone did “electronically report” the contribution to the MEC 19 days later on the quarterly report form and with the same content required under §130.041. At this point, it could be argued that the requirement of §130.044 to “electronically report any contribution by any single contributor which exceeds five thousand dollars to the Missouri ethics commission” had been met. We disagree with this argument.

The stated purpose of the MEC’s “48 hour report” form is “to report within 48 hours.” In this case, though, because the 48 hours had passed, use of the proper 48-hour form would allow the MEC to know that a report of that specific information had been made. Reporting the same information on another form fails to meet the terms of the statute. The MEC has the authority to prescribe the form of the electronic report.¹³ Otherwise, every electronic communication would have to be analyzed to determine if a report was made. A committee should file the proper simplified form that is used to report such contributions within 48 hours (or when they make that report if it is late).

We find that the required electronic report was filed late. The report of the \$6,000 contribution was filed 150 days past the statutory deadline. Therefore, a late fee of \$1,500 is appropriate.

Summary

Ronald J. Leone is subject to a late filing fee of \$1,500 for untimely filing of an electronic report of a contribution exceeding \$5,000.

SO ORDERED on September 6, 2013.

/s/ Nimrod T. Chapel, Jr.
NIMROD T. CHAPEL, JR.
Commissioner

¹³ We have no power to superintend another agency’s procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm’n*, 700 S.W.2d 445, 450 (Mo. banc 1985).